United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1975. 617

HARRIET ELIZA JORDAN, APPELLANT,

vs.

ETHLAN ANNA O'BRIEN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 23, 1908.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 23, 1908.

In the Court of Appeals of the District of Columbia.

No. 1975.

HARRIET ELIZA JORDAN, Appellant,
vs.
ETHLAN ANNA O'BRIEN.

a Supreme Court of the District of Columbia.

Equity. No. 28070.

HARRIET ELIZA JORDAN, Plaintiff,
vs.
ETHLAN ANNA O'BRIEN, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed October 3, 1908.

In the Supreme Court of the District of Columbia, the Third Day of October, 1908.

Equity. No. 28070.

HARRIET ELIZA JORDAN, Plaintiff,
vs.
ETHLAN ANNA O'BRIEN, Defendant.

To the Supreme Court of the District of Columbia, holding an Equity Court:

The plaintiff states as follows:

1. She is a citizen of the United States and a resident of the District of Columbia, is unmarried and never has been, and brings this suit in her own right.

2. The defendant is a citizen of the United States and a resident of the District of Columbia and is sued in this action in her own right.

3. That Martha Alethea Jordan of the City of Washington, District of Columbia, was plaintiff's mother and in her lifetime and at the time of her death was seized in fee simple of certain real estate consisting of a house and lot numbered nine hundred and thirty-eight (938) on L street north between Ninth and Tenth streets West in the City of Washington, District of Columbia, and which is more particularly described in the deed to said Martha Alethea Jordan, dated May 4, 1863, as all that certain parcel of land
2 situate and lying in the City of Washington, District of Columbia, and being that part of square numbered three hundred and seventy (370) as the same is designated and described on the plats and plan of said city and contained within the following metes and bounds beginning for the same at a point in the north line of said square distant eighty-five feet four inches from the northwest corner thereof and running thence east nineteen feet eleven inches, thence south thirty-six feet, thence west two feet eleven inches, thence south thirty-two feet eight inches, thence in a northwesterly direction to a point south of the place of beginning and distant sixty-four feet one inch therefrom, and thence north sixty-four feet one inch to the place of beginning; and being so seized, she, the said Martha Alethea Jordan, did on or about the third day of December, 1870, depart this life leaving surviving her her husband, Robert Stewart Jordan, and the plaintiff, her only child and legal heir.

4. That the said Martha Alethea Jordan during her lifetime duly made and published her last will and testament in writing dated the third day of September, 1870, and the said last will and testament was duly proved and allowed by and before the Supreme Court of the District of Columbia, holding a Probate Court, as will appear from the records of this Honorable Court, and a copy whereof is hereto annexed, marked Exhibit "A" and which the plaintiff exhibits as part of this her bill of complaint.

3 5. That the said Robert Stewart Jordan mentioned in said will departed this life on or about the fourth day of December, 1907, and his interest and offices under the will have therefore ceased.

6. The plaintiff would farther show to the Court that she is the Harriet Eliza Jordan named in the said will and as such has from the date of the death of the said Robert Stewart Jordan been and is now in possession of the said premises and claims title thereto in fee simple as the devisee in fee under said will; but notwithstanding said devise the defendant, as plaintiff is advised and believes and so states, has claimed and still asserts that under said will the plaintiff is not entitled to a fee simple estate but is entitled merely to a life estate in said premises should she die without heirs of her body, and that she, said defendant, has a contingent interest under said will after the determination of said life estate, the condition being that the plaintiff shall die without heirs of her body.

7. Plaintiff would also show to the Court that the claim of the defendant to a contingent interest in said property as aforesaid is in the nature of a cloud upon her title and as such has impaired and will continue to impair the selling value thereof.

The premises considered the plaintiff prays:

1. A decree settling the construction of said will and directing and setting forth what estate in the premises mentioned in said will the plaintiff is entitled to.

4 2. That the said defendant may be forever and hereafter restrained by the order and injunction of this Honorable Court from ever asserting or claiming any title to said premises under said will.

3. And for such other and further relief in the premises as equity may require and the Court may see fit.

4. And that the writ of subpœna shall issue against the said Ethlan Anna O'Brien, commanding her to appear in this Court, at some certain day to be therein named, to answer the premises, but not under oath, the answer under oath being hereby waived, and to abide by and perform such decree as may be passed therein, and as in duty bound, etc.

HARRIET ELIZA JORDAN, *Plaintiff.*

FRED BEALL,
WM. HENRY,
Solicitors for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, the undersigned Notary Public in and for the District of Columbia, this the 1st day of October, 1908, Harriet Eliza Jordan, who being by me first duly sworn on oath deposes and says that she has read the above and foregoing bill by her subscribed, and knows the contents thereof, and that the facts therein stated upon her personal knowledge are true,

5 and those stated upon information and belief she believes to be true.

[SEAL.] CATHARINE F. MYERS,
Notary Public.

6 EXHIBIT "A."

Filed October 3, 1908.

In the name of God amen

I Martha Jordan, of the City of Washington, in the District of Columbia, being of infirm bodily health, but in the full possession of my mental faculties, do hereby make and declare this my last will and testament revoking all and every will or wills which I may have heretofore made.

Item First. I devise and bequeath unto my only daughter, Harriet Eliza Jordan, all my real estate, consisting of a house and lot, numbered nine hundred and thirty tight (938) on L street North between Ninth and tenth streets West in the City of Washington, District of Columbia, with all the appurtenances thereto belonging or in any wise appertaining except as hereinafter limited or restricted.

Item Second. It is my desire and wish that my beloved husband, Robert Stewart Jordan, shall be guardian of my said daughter,

Harriet Eliza, and that he shall receive and enjoy the rents and profits of the said property for and during his natural life; with the privilege to my sister Ethlan Anna O'Brien, of remaining undisturbed as tenant in possession of said premises at a rent not to exceed Thirty Dollars per month.

Item Third. At the death of my said husband, Robert
7 Stewart Jordan, the property is to go in fee to my said daughter, Harriet Eliza, if living, but if dead, then to the heirs of her body, if any.

Item Fourth. In case of the death of my said husband and the death also of my said daughter, Harriet Eliza, without heir or heirs of her body, then the property shall go to my said sister Ethlan Anna O'Brien, if then living, for the term of her natural life, or if dead, to the heir or heirs of her body, if any living, upon payment of One Thousand Dollars to my half sister, Catharine Elizabeth Garrettson, if she be then living; but if the said Catharine Elizabeth be dead, then the payment of One Thousand Dollars as aforesaid shall be made to the heir or heirs of her body.

Item Fifth. I appoint my said husband Robert Stewart Jordan, Executor of this my last will and testament, with full authority to collect all dues.

In witness whereof I have signed my name and affixed my seal, this third day of September, in the year of Our Lord One Thousand Eight Hundred and Seventy, at the City of Washington, District of Columbia.

MARTHA ALETHEA JORDAN [SEAL.]

Signed, sealed, published, and declared by the said testatrix, Martha Alethea Jordan, as, and for her last will and testament in the presence of us, who at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses.

SAML. E. TYSON, *M. D.*
JOHN G. AULD.
NIMROD GARRETTSON.

as witness.

8 *Demurrer.*

Filed October 27, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 28070.

HARRIET ELIZA JORDAN, Complainant,
vs.
ETHLAN ANNA O'BRIEN, Defendant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the complainant's bill of complaint contained to be true, in such manner and form as the

same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer shows that the complainant has not in and by her said bill made or stated such a case as does or ought to entitle her to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed, with her costs and charges in this behalf most wrongfully sustained.

ETHLAN ANNA O'BRIEN, *Defendant.*

SLEMAN & LERCH,
Solicitors for Defendant.

9 The undersigned hereby certify that in their opinion the foregoing demurrer is, well found- in law.

SLEMAN & LERCH,
Solicitors for Defendant.

DISTRICT OF COLUMBIA, *ss:*

Ethlan Anna O'Brien, being duly sworn, on oath says: that she is the identical person named as defendant in the above entitled cause—that she is familiar with the proceedings taken by her counsel in this case, to wit, the filing of the foregoing demurrer in her behalf, and says that the said demurrer is not interposed for delay.

ETHLAN ANNA O'BRIEN.

Subscribed and sworn to before me this 27th day of October, 1908.

[SEAL.] C. D. RATCLIFFE,
Notary Public.

10 *Decree.*

Filed November 12, 1908.

In the Supreme Court of the District of Columbia.

28070. In Equity.

HARRIET E. JORDAN
v.
ETHLAN A. O'BRIEN.

Upon consideration of this cause on hearing on bill of complaint and demurrer it is, by the Court, this 12th day of November, 1908,

Adjudged, ordered and decreed that the defendant's demurrer is sustained and the bill of complaint herein for the construction of the will therein referred to, be and the same is hereby dismissed with

costs to the defendant, and an appeal having been noted by the complainant in open Court, the appeal bond is fixed at $300.00.

JOB BARNARD, *Justice.*

Memorandum.

December 1, 1908—Appeal bond approved and filed.

11 *Directions to Clerk for Preparation of Transcript of Record.*

Filed December 1, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28070.

HARRIET ELIZA JORDAN, Plaintiff,
vs.
ETHLAN ANNA O'BRIEN, Defendant.

The clerk of said Court will please make up the record in the above-entitled cause for the Court of Appeals, and will include in the record the original bill with its exhibit, the demurrer, and the decree dismissing bill.

FRED BEALL,
WM HENRY,
Attorneys for Plaintiff.

12 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 11, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 28070 Equity wherein Harriet Eliza Jordan is Plaintiff and Ethlan Anna O'Brien is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of December, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1975. Harriet Eliza Jordan, appellant, *vs.* Ethlan Anna O'Brien. Court of Appeals, District of Columbia. Filed Dec. 23, 1908. Henry W. Hodges, clerk.

them at their maturity. The balance of the fund was invested in a gas bond of the par value of twenty dollars, the premium on which was paid by the then life tenant and about which no question is therefore pending.

The fund therefore existing, invested as above stated, if the maturing coupons as collected are to be treated wholly as income, the corpus of the fund must by the time of the maturity of the bonds suffer a waste to the extent of the premium originally paid, viz., of two thousand nine hundred and eighty dollars. Under these circumstances more than 11 per centum of the principal of the fund, properly belonging eventually to the remainderman, will have been wasted, wholly to the undue profit of the life tenant. To permit such an outcome to the administration of a trust fund of twenty-six thousand dollars would result in doing substantial injustice between tenant for life and remainderman. Yet this is what will happen if the decree below is affirmed.

The appellant, on the other hand, contends that in administering the trust, from the proceeds of each maturing coupon should be deducted and reserved a sum sufficient at the maturity of the bond to amount to the sum originally taken from the corpus of the fund to pay the premium. This contention should obtain the sanction of the court, more particularly for three reasons, viz:

1st. It will aid in doing substantial justice between the tenant for life and the remainderman.

2d. In investments which will receive the approval of the court as proper for a trust fund the premium paid on bonds is in respect of interest—that is to say, it is by way of equalizing the arbitrary rate provided in the bond with the prevalent market rate which like investments command.

3d. The remainderman is entitled to receive his principal intact, and a trustee may not so invest the fund or so administer it for the benefit of the life tenant as to inevitably waste or impair the principal.

The general question presented has been quite carefully considered by the Supreme Judicial Court of Massachusetts in two cases.

In New England Trust Company *vs.* Eaton (140 Mass., 532) the court decided that if a trustee under a will, who holds a fund in trust to pay the income to a person during his life, with remainder over, makes an investment in bonds which are payable at a day certain, and are bought at a premium, he is not obliged to pay the entire net income to the tenant for life, but is entitled to deduct such an amount from the actual interest received on each bond as will, by successive deductions, make good to the capital the amount of premium paid upon the original purchase of the bond, without regard to the market value of the bond at the time of making such deductions.

In support of this conclusion the reasoning of Justice Devens, who delivered the opinion of the court, may well be quoted:

> "Assuming that the purchase of bonds at a premium was safe and prudent, and such as judicious men would make in the conduct of their affairs, which is substantially the rule heretofore laid down, the question arises, inasmuch as it is certain that the corpus of the fund is to be diminished if this investment is permanent, whether the trustee may retain such sums annually as will restore to the fund, at its maturity, exactly what was taken therefrom at the time of the purchase. This is what the trustee has undertaken to do. That which is really income from a bond purchased at a price above par, say $120, and payable in ten years, is not the amount received in interest annually, but that amount, deducting therefrom the sum necessary to restore, at the end of the ten years, the $20 premium. No prudent man would treat as income from his property the whole amount received, when there was thus to be a diminution of his principal amounting at the end of the ten years to this premium, and steadily tending to this during the entire period. To deal with interest thus received

as income purely, would, to the extent of the premium, exhaust the capital."

"The premium paid is no more than an advance from the capital, which the remainderman is entitled to have repaid, if he is entitled to receive the capital intact. If, in such a case, the tenant for life should die before the maturity of the bond, and thus the whole advance not then be repaid, he would have paid no more than his just proportion. Unless the premium is to be restored, it is not easy to see how investments in bonds bearing a premium can, in justice to the remainderman, be made, his property where a bond is kept to maturity being diminished solely for the benefit of the tenant for life. Into the question how much income an investment at a premium in a bond payable at a fixed future time produces, the loss of the premium at that time necessarily enters as a factor."

In the earlier case of Hemenway *vs.* Hemenway (134 Mass., 446) the court was unable to lay down such a general rule, but thought the circumstances in each particular case should govern, care being had in doing substantial justice between tenant for life and remainderman. In deciding against the contention of the remainderman, so far as concerned the bonds purchased at a premium, it said:

"The fact that a *small* premium was paid is not, of itself alone, enough to prevent the tenants for life from receiving the net interest, and the circumstances, so far as disclosed, show no special reason why they should not receive it. The investment constitutes a *very small proportion of a large estate.* Nothing shows that the premium was paid for interest above the market rate. We have no reason to doubt that, taking the whole administration of the trust into account, *the balance has been evenly held between the two parties;* and the relation between the remaindermen and the life tenants is such that there is less call than there might be in some other cases for treating the life tenants with great strictness."

Applying the controlling principles which moved the decision of the court in Hemenway *vs.* Hemenway to the case at bar, we unhesitatingly affirm that they justify a reversal of the decree below.

In that case the controlling factors were: *The "small premium," the "investment constituted a very small proportion of a large estate,"* the *"balance has been evenly held between the two parties."* In the present case the premium on the Virginia Midland bonds is not small, but large, amounting to 13½ per cent. The investment (over 90 per cent.) constitutes a very large proportion of a very small estate, and the result would be a loss of over 11 per cent. to the remainderman.

If these facts were substituted to premise the conclusion of the court above cited, can there be any question as to its decision?

Great stress was laid in the argument below on the authority of Hemenway *vs.* Hemenway, and in the absence of any reference to Trust Company *vs.* Eaton the inferences drawn from it appear to have had a controlling effect on the decision of the presiding justice. We believe we have demonstrated that these inferences were not justified by the facts in the present case.

The two cases which we have cited contain such a masterly review of the arguments which may be advanced for and against the contention of the appellant that some further discussion of them seems justifiable.

In Hemenway *vs.* Hemenway it was contended on behalf of the remainderman that "when a bond having only a short time to run is purchased at a price above par, inasmuch as it is certain that when it is paid off the trustee will only receive par, the investment is necessarily a wasting one to the extent of the premium paid, and the rights of the remainderman are sacrificed in favor of the tenant for life, unless a due proportion of the interest is set aside to make good the waste occasioned by the approach of the day of payment. Otherwise, the trustee in time might sacrifice the whole fund."

While the life tenants admitted the force of this reasoning, they insisted: "That the court must assume any investments, which it would sanction, to be absolutely safe, and that therefore the only ground of difference in the value of such investments, which the court can recognize, lies in the rate of interest which investments pay respectively. If that be greater than the market rate, the bond will stand above par; if less, below. It follows, they say, from the same reasoning which would entitle a remainderman to have the capital protected by a reservation from the interest if a short bond is purchased above par, that the life tenant must have his full interest made good out of the increasing capital if a short bond is purchased below par."

The court then deemed it inexpedient and unjust to lay down such a sweeping principle with or without the complement which would have made it satisfactory to the tenants for life, but, as we have noted before, it changed its view in Trust Company *vs.* Eaton, and laid down this very rule, even without the complement suggested by the life tenant.

But whether or not the rule laid down in the Eaton case entirely covered the subject-matter of this controversy, there still exists in the Hemenway case ample authority for the reversal of the decree below, for in no other way can substantial justice be done both parties in interest.

The question involved is of sufficiently general and growing importance in this jurisdiction to justify an analysis of the objections made in the dissenting opinion in Trust Company *vs.* Eaton to the rule which received the assent of the majority of the court.

Mr. Justice Holmes, who delivered the opinion in Hemenway *vs.* Hemenway, based his objection to the principle in question on the ground that it could only be postulated on the premise that premiums are paid for interest alone. This, in his opinion, was not true, as they were paid for the safety of the capital as well. From this he argued the practical impossibility of determining what proportion of the premium is paid for interest and what proportion for the protection of

capital, and consequently the relative proportions paid in the interest of the tenant for life and for the protection of the remainderman.

Mr. Justice Holmes in his dissenting opinion in the Trust Company *vs.* Eaton appears to admit that if it were assumed that "the trustee might have made these investments with the intent to keep them until the trust expired or the bonds matured, and in the exercise of his discretion as a business manager, in view of the particular circumstances of the case, thought it necessary to retain a fund in suspense against a possible loss of premium," he would be disposed to acquiesce in that opinion. This, we take it, is an admission that circumstances might exist to justify the creation of a reserve, in the nature of a sinking fund, out of the income of the investment, provided, however, that this reserve did not become definitely a part of the capital of the fund until the final liquidation of the investment showed that the corpus had been impaired, and then only to the extent of such impairment. If, therefore, the premium was at all substantial and the security should be held to maturity, so that the impairment passed beyond the sphere of possibility or even probability to that of fact, there would be little practical difference in the outcome of the views of either the majority or of the minority of the court; as they both agree that the waste should be made good out of the interest collected. But while the majority held that the very nature of the investment created such a probability of such eventual waste as to convert this reserve, as fast as it was set aside, into capital and give it a character which it could not afterwards lose, even if the investment were disposed of at a profit before maturity; the minority, on the other hand, seemed to hold that the probability of waste could not be assumed as long as a possibility exists of a disposition of the investment before maturity without loss, though they admitted that the trustee was not necessarily obliged to take advantage of such opportunity.

If one considers the nature of the investment of capital in a bond, particularly when its maturity is not too long deferred, the determination of the amount of the return it produces for the forbearance of its use, is susceptible relatively of easy computation. The limit of income, profit or gain of such an investment must be the difference between the price paid for the bond and the total amount receivable from coupons or principal up to and including maturity. With a maturity of ten years distant, an annual coupon at the rate of 6 per cent. and a premium of 13½ per cent. paid on purchase, the account would briefly be as follows:

To be received at maturity	$1,000
Coupons for ten intervening years	600
Total receivable	$1,600
Deduct cost of investment	1,135
Total income, profit or gain	$465

or $46.50 per annum per one-thousand-dollar bond, if this profit is to be distributed over ten years. If such an investment is held to maturity, no logic on earth can make the annual profit therefrom $60, the full amount of the coupon.

But at the time of purchase premiums or discounts on good bonds are really paid or allowed on account of interest. The theory that they are paid or allowed for the safety of capital as well, in investments of this character, is, in our opinion, untenable. We believe this is susceptible of demonstration. The accepted economic analysis of profit on capital recognizes three constituent elements, viz., risk, interest and cost of supervision. These three elements or factors vary according to the nature of the venture. In loans of money on good security, as, for example, in investments of capital in good interest-bearing bonds, the elements of risk and superintendence are recognized to be negligible quantities, leaving only one factor having any bearing on market value, viz.,

interest. The rate of interest, however, is solely determined by the laws of demand and supply. It is true that certain bonds may be endowed with special qualifications, which make the possession of them, profitable beyond the mere interest return thereon. The use of them may be widespread and the supply of them may be limited; the rate will consequently be very low independent of the general condition of the market as regards money seeking investment. For example, government bonds may be profitably used by national banks to secure government deposits or an issue of currency; municipal or State bonds have several advantages conferred on them by law as legal investments for savings banks, and there are many other similar cases. In general, however, the actual factor is the ratio of money seeking investment to the volume of securities offered to the investing public. If the premium on the same bond varies from week to week, or from year to year, surely it is not that the risk on the investment is varying and requiring more or less insurance for safety; the risk has not varied, but only the demand, and so the interest rate rises or falls. Two bonds may be equally good; one may be well known and scarce, the other more novel and plentiful, and yet, though the risk is the same, the laws of demand and supply will govern the rate of interest.

The exigencies of modern business necessitate the fixing of an arbitrary rate of interest in corporate securities, which in practice is adjusted to the market rate at the time of issue or sale through the medium of discount or premium. Whether the offerings of these bonds are by the original obligors or by subsequent holders, the premium they will command at the date of offering, or the discount which they must then allow, is simply an adjustment, of the arbitrary rate mentioned in the obligation, with the prevailing market rate for securities of like character. If it were a practical possibility on the occasion of each investment to deal directly with the principal and have the interest rate there and then written in the obligation, there would be no occasion for

premium or discount; the contract itself would specify the market rate. Under existing conditions, this is all that premium or discount does.

A trustee, in administering a trust of the character under consideration in this and in the cases cited, is not engaged in a traffic in securities, but in the custody of capital intact, so that the remainderman may thus receive it, while, in justice to the life tenant, it is made to produce an income by being kept in income-producing property. When for this purpose an investment is made in short-term bonds at a premium, the exact annual value of the same to the life tenant is necessarily fixed at the moment of investment and the income is limited to such sum as shall, on the assumption that the security is kept to maturity, leave the corpus of the estate at that time intact. If, as in the present case, the bond bears interest at the rate of 6 per cent. and matures in ten years and commands a premium of 13½ per cent., it is selling on something better than a 4 per cent. basis, the rate prevailing nowadays on first-class bonds. A trustee investing in such a bond, on such terms, is making nothing more nor less than a 4 per cent. investment, and that is the income return the life tenant may legitimately claim, without injury to the rights of the remainderman. Of the sixty dollars annually collected from the coupons of such a bond thirteen dollars and fifty cents must be reserved to repay capital the amount advanced for premium and forty-six dollars and fifty cents remain as income.

It is not proper to assume that a trustee is going to trade in the trust capital and sell each time the exigencies of demand and supply affect the premium profitably and so recoup the advance. The relations of the tenant for life and the remainderman towards the investment become fixed at the time it is made and remain undisturbed despite market fluctuations.

In conclusion, therefore, quoting again from Trust Company *vs.* Eaton—

> "There can ordinarily be no better test of the true income which a sum of money will produce, having regard to the rights of both the tenant for life and the remainderman, than the interest which can be received from a bond which sells above par and is payable at the termination of a fixed time, deducting from such interest, as it becomes due, such sums as will at maturity efface the premium."

It is respectfully submitted that the decree below should be reversed.

WARD THORON,
WM. A. MCKENNEY,
For Appellants.